



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,377	07/30/2003	Gianfranco D'Amato	27514-0012001	8948

26211 7590 04/06/2011
FISH & RICHARDSON P.C. (NY)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT	PAPER NUMBER
----------	--------------

1782

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

04/06/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/630,377	Applicant(s) D'AMATO, GIANFRANCO	
	Examiner MICHELE JACOBSON	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6,9-13,15-31,33-38 and 41-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6,9-13,15-31,33-38 and 41-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner Notes

1. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-6, 9-13, 15-26, 30, 31, 33-38 and 41-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4-10, 12-19, 22-27, 30, 31, 33, 34 and 38-40 of copending Application No. 10/630,378. It is noted by the examiner that a notice of allowance was mailed for application 10/630378 on 2/24/11, but the fees have not yet been paid.

4. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of application '378 teach all that is claimed in the rejected claims of the pending application.

5. Regarding claims 44-48, 4-6 and 8, claims 1, 34 and 38-40 of application '378 teach a container having all of the limitations of claim 45-48 and 4-6 of the current application in combination. Claims 2 and 9-10 are taught by claims 13 and 31 of application '378. Claim 3 is taught by claim 12 of '378. Claim 8 is taught by claim 5 of '378. Claim 11 is taught by claim 16 of '378.

6. Regarding claim 12, the limitation that the two or more layers are coextruded is a method limitation and therefore receives little patentable weight in an article claim, since the final product is a laminated structure which is taught by '378 in claim 16. Also it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to form the multilayered container of '378 by lamination and/or coextrusion since both methods are notoriously well-known methods in the art for forming multilayered containers and that the particular method chosen is selected based on the intended end result and intended processing of the article.

Art Unit: 1782

7. Regarding claims 13 and 15-26, these limitations are taught in claims 4, 6, 8-11, 15, and 17-19 of '378 respectively. Claims 30-31 are taught by claims 14 and 31 of '378. The limitations of claims 33-38 and 41-43 are taught by claims 22-27, 30, 32 and 33 of '378 respectively.

8. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102/103

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 4-6, 9-13, 15-17, 19-21, 23, 24, 26-31, 33, 34, 36, 38, 41, 42 and 44-47 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35

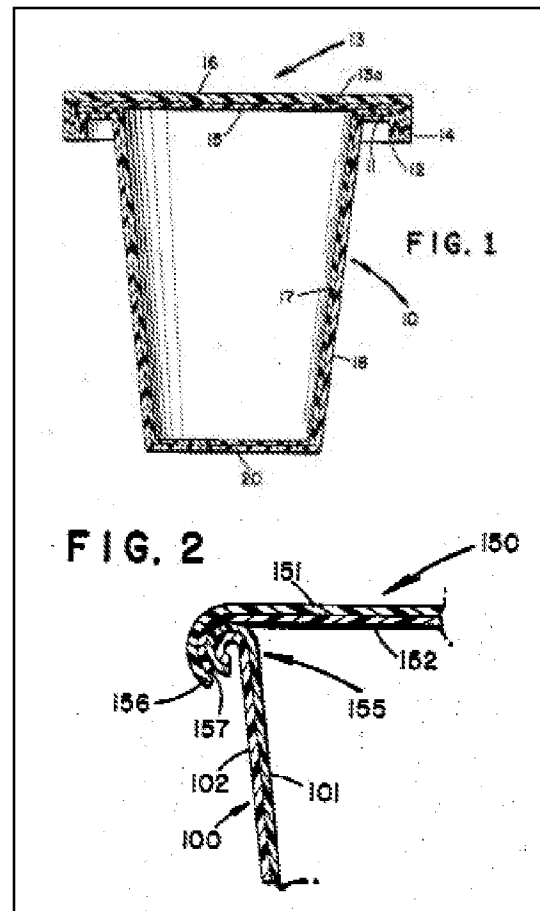
Art Unit: 1782

U.S.C. 103(a) as obvious over Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis).

12. Andrulionis teaches a covered plastic container used for food products having a fluid tight sealing layer across the container opening for attaching a lid, but wherein the sealing layer is separable from the flange so that the lid may be removable. (Col. 1, lines 4-9) Such a container is disposed with a rim that is bent outward from the container for receiving the lid. (Fig. 1, 2) Laminate materials useful for the container include (with the outer layer recorded last) polyethylene-polystyrene, HIPS-polyethylene, ABS-polypropylene, polystyrene-PVC and polyethylene-PVC. (Col. 2, line 60-Col. 3, line 4) The sealing of the lid to the container is recited to be accomplished by methods including ultrasonic welding. (Col. 3, lines 52-54)

13. The outside wall of the container and the outer layer of the lid are designed for aesthetic appeal and may include coloration, printing or decorative trim. (Col. 4, lines 47-49) The material for the outside wall of the container may be transparent. (Col. 4, lines 49-50)

14. Regarding claims 2, 9, 10 and 44-47: Andrulionis teaches a transparent two layer container having a bent opening edge



Art Unit: 1782

configured for receiving a removable lid in a sealing fashion as claimed in claims 45-47 and made of the same polymeric materials recited in dependent claims 2, 9 and 10.

Since the materials recited by Andrulionis are the same as those disclosed and claimed to be useful by applicant, the container of Andrulionis would inherently be transparent and fluid tight and dimensionally stable and fluid tight from -50 °C to 120 °C as claimed in claims 44-47.

15. The limitation in independent claims 45-47 that the container is formed from a blank which is connected with itself for forming a continuous container wall is a product-by-process limitation that is given little patentable weight. Although Andrulionis does not disclose connecting a blank with itself to form the container wall, it is noted that “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process”, *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, “although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product”, *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

16. In the instant case, the container disclosed by Andrulionis would not be materially distinguishable from the container claimed by applicant since there are no limitations

Art Unit: 1782

recited regarding structural features imparted by joining a blank to itself. Therefore the container of Andrulionis anticipates the limitations of claims 45-47, 2, 9 and 10.

17. Regarding claim 4: Andrulionis discloses the same materials recited by applicant and therefore it naturally flows that the container disclosed by Andrulionis would also be flexible. It is noted applicant has not specified the degree of the flexibility and therefore since all materials would be expected to display some measure of flexibility, any material would read on this limitation.

18. Regarding claims 5: The limitation in claim 5 that the connection of the blank is prepared by heat and/or pressure is a product by process limitation that does not materially affect the article produced since no structural features are recited or interpreted to result from these processes. The article disclosed by Andrulionis would be materially indistinguishable from one formed by the process limitations recited in claim 5 and therefore anticipates the article claimed in claim 5.

19. Regarding claims 11 and 12: The product by process limitations recited in claims 11 and 12 would not be expected to produce a materially different product from that disclosed by Andrulionis. Therefore, the container comprising two layers disclosed by Andrulionis anticipates the container claimed in claims 11 and 12.

20. Regarding claim 13: The limitations in claim 13 regarding a *blank* are immaterial since they do not provide any structural limitations to the *container* claimed in claim 46, from which claim 13 depends. Therefore, Andrulionis anticipates the *container* claimed in claim 13.

Art Unit: 1782

21. Regarding claim 15: The layers of the container of Andrulionis are not intended to be peeled away and are therefore reasonably broadly interpreted to be “joined in a permanent junction” as claimed in claim 15.

22. Regarding claim 16: Andrulionis discloses the same materials recited by applicant and therefore one of the layers of the container disclosed by Andrulionis would inherently be “elastic, yet permanently ductile, and after the shaping, dimensionally stable” as claimed in claim 16.

23. Regarding claim 17: Andrulionis discloses the same materials recited by applicant and therefore the inner layer of the container would be liquid tight and the other layer would be gas tight.

24. Regarding claim 19: Since the materials disclosed by Andrulionis are fluid tight, the edges would be fluid tight as well.

25. Regarding claims 20, 21, 24, 30 and 31: Andrulionis discloses printing on the outer wall of a multilayer container comprising polyethylene as claimed in claims 20, 30 and 31. The product-by-process limitation of “coextrusion” recited in claim 31 is not interpreted to provide any structural features to the container claimed in claim 31 that would render it materially distinguishable from the container disclosed by Andrulionis. The printing is clearly intended to remain on the container and is therefore interpreted to be “resistant to rubbing” as claimed in claim 21. The product-by-process limitation that the layer is printed before the layers are laminated recited in claim 24 would not result in a materially distinguishable article from the printed container disclosed by Andrulionis

Art Unit: 1782

since the order of the printing operation does not provide any structural features to the container claimed. Therefore, Andrulionis also anticipates the limitations of claim 24.

26. Regarding claim 23: Since the materials disclosed by Andrulionis are the same as those recited by applicant the container of Andrulionis would comprise an ultrasonic absorbent material as claimed in claim 23.

27. Regarding claim 26-28: The product-by-process limitations that the closed end is formed by connecting lower end sections of a blank to one another or that the closed end comprises a bottom insert are not interpreted to produce a container that would be materially distinguishable from that disclosed by Andrulionis. The container of Andrulionis clearly has a bottom, closed end and therefore anticipates the container article claimed in claims 26 and 27. The bottom of the container of Andrulionis is formed of the same materials as the walls and would therefore be transparent as claimed in claim 28.

28. Regarding claim 29: Andrulionis discloses that the container is transparent and may be colored.

29. Regarding claim 33: The container disclosed by Andrulionis is circular.

30. Regarding claim 34: The printing disclosed by Andrulionis is interpreted to read on the limitation of a "three-dimensional effect" recited in claim 34 since it is a physical object having three dimensions.

31. Regarding claim 36: Claim 36 recites the limitation "wherein the print forms a control window on the wall". Applicant's specification describes the term "control window" as "that the print covers the complete container wall except for a control

Art Unit: 1782

window that the interior of the container can only be seen through this control window.

In this connection, it is also possible for several of such control windows to be arranged in the longitudinal direction of the container and or/in the circumferential direction of the container. Thereby, various areas of the interior of the container can be seen". (Para. [0058] applicant's specification) This description does not specify the shape of these "control windows" or the amount of the surface of the container that must be covered in order for the unprinted area to be interpreted to comprise a "control window". The examiner interprets the limitation of a "control window" to mean that the container is printed such that some regions of the surface obscure visibility of the contents of the container and some regions are unprinted and thereby comprise "control windows". As such, a container having any printing with any regions that are not printed reads on this limitation. As such, Andrulionis anticipates the limitations of claim 36.

32. Regarding claim 38: As can be seen in Fig. 2 of Andrulionis, the opening edge is bend such that is rolls down to an angle of greater than 90° relative to the rest of the container wall.

33. Regarding claim 41: The container of Andrulionis would inherently be able to be stacked and unstacked since one of ordinary skill would be capable of balancing one on another.

34. Regarding claim 42: Both of the layers of the container recited by Andrulionis would be expected to provide some measure of heat insulation and therefore are interpreted to be formed as a heat insulating layer.

Claim Rejections - 35 USC § 103

35. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

36. Claims 22, 25 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis) as applied to claims 46 and 20 above.

37. Andrulionis teaches what has been recited above but is silent regarding the container wall comprising more than two layers. Andrulionis additionally teaches that for carbonated beverages a barrier resin would be required for the container.

38. Regarding claims 22, 25 and 48: It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a barrier resin layer in addition to the layers comprising the wall of the container disclosed by Andrulionis for or containers intend to hold carbonated beverages or any other material that required barrier properties. Increasing the number of layers would have predictably produced the desirable results of increasing the barrier properties of the container of Andrulionis while at the same time improving the structural integrity of the container. Such a container would have had the same structure as claimed in claim 48 and would have inherently displayed the same properties since it would have been comprised of the same materials disclosed by applicant to be useful for the claimed invention.

Art Unit: 1782

39. Such a container comprising at least three layers it interpreted to read on the limitation in claim 25 that “at least one of the layers is itself a laminate” since a container comprising three layers would be materially indistinguishable from one comprising two layers which had been laminated to one another to form a laminate which is then laminated to a third layer.

40. Andrulionis discloses that the container advantageously comprises printing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have disposed the printing on any of the layers of the container disclosed since trap printing is universally known in the packaging arts. Therefore, the obvious modification of Andrulionis would have produced the same invention as claimed in claims 22 and 48.

41. Claims 3, 6, 18, 23 and 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis), as applied to claims 5 and 46 above, further in view of McGirr et al. U.S. Patent No. 2,235,963 (hereafter referred to as McGirr).

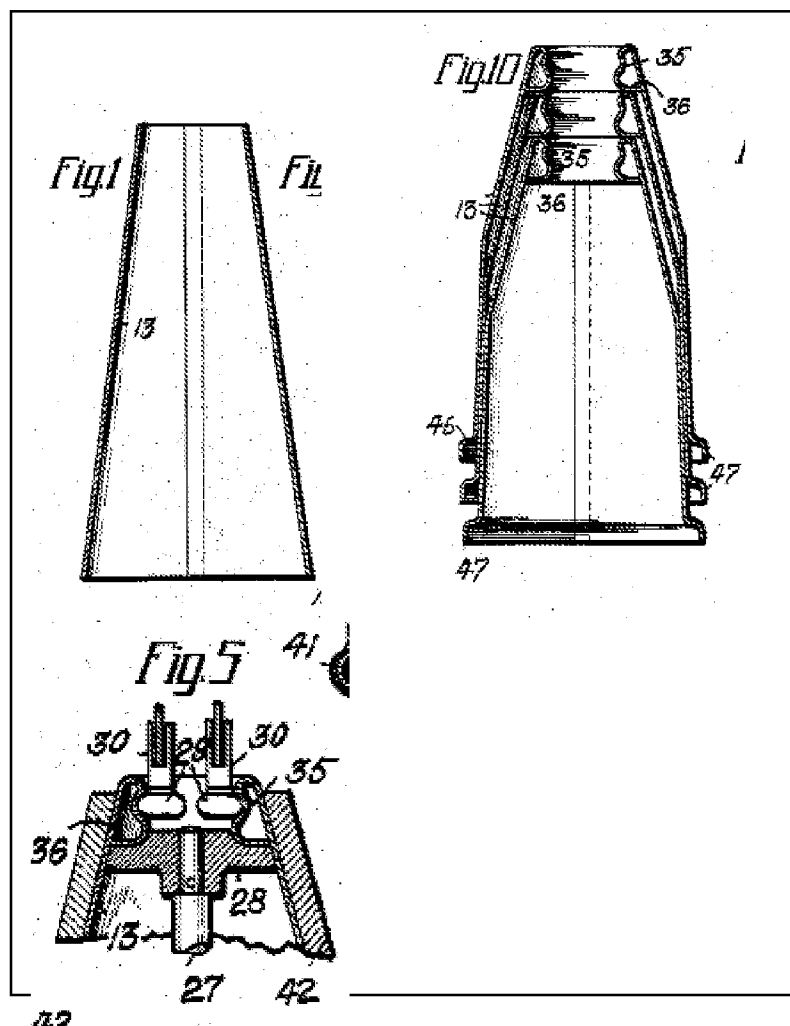
42. Andrulionis teaches what has been recited above but is silent regarding the container having a longitudinal seam or a lacquer coating.

Art Unit: 1782

43. McGirr teaches a container that is fabricated from a sheet of cellulose material that is transparent, light in weight, tough in texture and unbreakable for holding either liquids or dry materials. (Col. 1, lines 4-12) The container also insulates the contents from all parts of the container itself and therefore may be utilized in handling articles of food. (Col. 1, lines 13-16) The container consists of a sheet of material which is cut to the proper shape, and then formed into a frustrum as shown in Fig. 1, the frustrum being held in form by its overlapping edges which form a seam as seen in Fig. 3. (Col. 2, lines 19-27) The various seams of the container may have a solvent or adhesive applied to them to further aid

their making a tight seal so that they would hold either liquids or powder. (Col. 4, lines 36-41) As can be seen in Figs. 5 and 10 the opening of the container comprises bent over material from the sides of the container which surrounds the opening. (Fig. 5 and 10) The container is recited to have printing. (Col. 3, lines 45-46)

44. The container is



Art Unit: 1782

recited to comprise an additional layer which may be a sprayed high lacquer solvent which covers the entire inside of the container to make it completely moisture proof while at the same time providing an insulating medium that prevents the contents of the container from coming in contact with any part of the container itself. (Col. 4, lines 21-30)

45. Regarding claim 3: Both Andrulionis and McGirr are directed towards containers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a sprayed layer of lacquer on the container disclosed by Andrulionis as taught by McGirr in order to provide the benefit of making the container completely moisture proof while at the same time providing an insulating medium that prevents the contents of the container from coming in contact with any part of the container itself as disclosed by McGirr. This obvious modification of Andrulionis would have produced the same invention as claimed in claim 3.

46. Regarding claims 6, 18, 23 and 43: McGirr evidences that it was universally known in the container arts to produce containers by using a sheet of material which is cut to the proper shape, and then formed into a frustrum as shown in Fig. 1, the frustrum being held in form by its overlapping edges which form a longitudinal seam which is then adhered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have produced the container of Andrulionis in this fashion by cutting a sheet of material comprising two layers of the material disclosed by Andrulionis into the proper shape (forming a "blank") and forming a container from this cut sheet by overlapping the edges of the sheet to make a longitudinal seam. A

Art Unit: 1782

container made in this fashion would have been the same as claimed in claim 6. The outer and inner layers would connect to one another in such a configuration and are therefore interpreted to read on the limitation of "connection layers at least in the overlap region" claimed in claim 18. Andrulionis discloses the same materials as recited by applicant and therefore the layers of Andrulionis are interpreted to be ultrasonic absorbent as claimed in claim 23. The cut sheet of material for forming the container of Andrulionis according to the knowledge universally known in the art is interpreted to read on the blank claimed in claim 43.

47. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis), as applied to claims 20 and 46 above, further in view of McLaughlin U.S. Patent No. 6,210,766 (hereafter referred to as McLaughlin)

48. McGirr teaches all that is claimed in claims 20 and 46 as shown above but fails to teach that the container comprises printing that is or has a hologram.

49. McLaughlin teaches a container provided with a hologram or three dimensional effects in order to provide decoration and information for the user. (Col. 1, lines 13-37)

50. Andrulionis and McLaughlin both directed towards printed containers. It would have been obvious to one having ordinary skill in the art to provide the container disclosed by Andrulionis with printing in the form of a hologram or three dimensional effects in order to provide that container with decoration and/or information for the user

Art Unit: 1782

of the container. Such a container would have been the same as the invention claimed in claim 35.

51. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis), as applied to claims 20 and 46 above, further in view of Clagett U.S. Patent No. 2,689,424 (hereafter referred to as Clagett).

52. Andrulionis teaches all that is claimed in claims 20 and 46 above, but is silent regarding the printing being applied to the container so that it is only visible after the food has been at least partially taken out of the container.

53. Clagett teaches a drinking container in which two images are created in different colors so that one image is present when the beverage is present and the other image is present when the beverage is not present in order to provide a unique aesthetic appeal to the beverage container (col.1, lines 1-29). One of the prints of Clagett is only visible after the food has been taken out of the container (col.2, l.32-49).

54. Andrulionis and Clagett are both directed to containers having a sidewall in which the contents of the container are visible. It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container to the container disclosed by Andrulionis in order to provide a unique aesthetic appeal to the container, as taught by Clagett. Such a container would have been the same as that claimed in claim 37.

Response to Arguments

55. Applicant's arguments filed 1/27/11 have been fully considered but they are not persuasive.

56. Applicant's request on page 10 of the remarks that the provisional double patenting rejection over copending application 10/630378 effectively be held in abeyance is acknowledged. However, this rejection is still maintained.

57. Applicant asserts on page 11 of the remarks that Andrulionis fails to anticipate the limitations of claim 48. However, claim 48 was not rejected under 35 USC 102(b) and therefore, Andrulionis is not required to anticipate all of the features of claim 48. Applicant has failed to negate the motivation to modify Andrulionis which would cause one of ordinary skill in the art to arrive at the claimed invention stated above and therefore the examiner is not persuaded that Andrulionis fails to obviate the limitations of claim 48.

58. Applicant asserts on page 12 of the remarks with regard to claim 46 that the embodiment of the invention having 3 or more layers provides a container having fluid stability and fluid tightness across the temperature range claimed. However, claim 46 only recites a container having 2 layers. As such, this assertion is not germane to the limitations of claim 46. This assertion is also not germane to the anticipation of claim 46 by Andrulionis since Andrulionis clearly discloses a two layer container.

59. Applicant asserts on page 13 of the remarks that Andrulionis fails to disclose the temperature ranges claimed in the independent claims. Applicant states "The mere fact

Art Unit: 1782

that some of the materials identified in Andrulionis may be the same as some of the materials identified in the present application for manufacturing containers disclosed therein does not mean that the dimensional stability and fluid tightness across the -50 °C to +120 °C temperature range of the claimed invention will be "necessarily present" in the Andrulionis containers. Indeed a variety of factors, beyond simply material impact the performance characteristics of a container.". These assertions fail to identify **any** "factors" in which the materials of Andrulionis are deficient and which would render the container disclosed by Andrulionis **materially different** from that instantly claimed. Is there something special about the generic PP, PVC, PS, PA and PET materials disclosed by applicant that is not present in the disclosure of these same materials in Andrulionis? If so, would one of ordinary skill in the art be expected to identify this unique property without undue experimentation? The examiner has laid forth an explanation of why the materials of Andrulionis would be expected to inherently display the properties claimed by applicant and applicant has failed to provide *any evidence or actual scientific reasoning* to negate the explanation provided by the examiner. Therefore, the examiner still has a reasonable expectation that the materials of Andrulionis would inherently display the properties claimed.

60. Applicant asserts on page 14 of the remarks that the disclosure in Andrulionis that "The outside of the wall of the container and the outer layer of the lid will be designed for aesthetic appeal including coloration, printing and decorative trim. The material may be essentially transparent or may be colored white or any other suitable color and the nature of the contents and the supplier thereof will normally be printed

Art Unit: 1782

onto the surface". (Col. 4, lines 47-53) is somehow ambiguous as to whether the outside wall of the container is actually transparent. Applicant asserts that the material referred to in this passage "could be the material in the sealing layer of Andrulionis' lid". There is no reason to believe that this disclosure would refer *only* to the lid being transparent and exclude the wall of the container being transparent in the absence of an explicit disclosure that the "material" being discussed is solely lid material. Applicant's assertion is nonsensical and unpersuasive.

61. Applicant asserts on page 15 of the remarks that the container claimed in claim 5 "could, in some implementations, be held together without messy and costly additional adhesive material". However, applicant fails to point out any teachings in Andrulionis which require adhesive material for forming the walls of the container. Therefore, applicant has failed to materially distinguish between the container claimed and the container disclosed by Andrulionis.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1782

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1782

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson
Examiner /M. J./
Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782